garded as anomalous, though grounded in good sense and sound policy. The principal case cannot be commended for sense or policy unless we assume that the maintenance of the water connection would prevent, or render very difficult, the improvement of the plaintiff's land, facts which do not appear in the report.

EVIDENCE—ADMISSION BY SILENCE TO ACCUSATIVE DECLARATION AFTER ACCIDENT ADMISSIBLE.—In action for injuries sustained when struck by defendant's jitney bus it appeared that a bystander, after the accident, had told defendant he "ought to be strung up by the heels for running into a woman in that fashion." Defendant made no reply. This was offered in evidence and objected to. *Held,* properly admitted as an admission by silence when circumstances called for a reply, though the declaration of the bystander in itself, apart from the fact that it was unanswered, tended to influence the jury, and though not competent as proof of any fact implied in the declaration. *Baldarachi et al.* v. *Leach* (Cal., 1919), 186 Pac. 1060.

This court laid down as the better rule and the weight of authority on this question that when any declaration or question is directed to a party which challenges or suggests a response from one who could truthfully dispute or negative it, such is admissible in evidence, and it is for the jury to determine, in the light of all the circumstances, whether any significance attaches to a failure to reply; further, that the weight to be given this evidence depends upon how provocative the situation is to speech and how significant is the silence. The California Civil Code provides that evidence may be given of "an act or declaration of another in the presence and within the observation of a party and his conduct in relation thereto." The court in the present case, however, considers this to be merely the legislative statement of a recognized common law rule of evidence. Such a rule is undoubtedly often recognized and followed. See WIGMORE ON EVIDENCE, Vol, 2, §1071; *State* v. *Ellison,* 266 Mo. 604; *Int. Harvester Co.* v. *Voboril,* 187 Fed. 973; *Proctor* v. *Ry.,* 154 Mass. 251. It clearly could not be held as a matter of law that failure to make a response in such case would indicate a sense of guilt; if admitted at all, the jury must be the sole judges of the significance and weight of such evidence. Further, in the case of *State* v. *Ellison,* cited *supra,* the following qualification of such doctrine is laid down: that such failure to reply cannot be admitted in evidence "if voluntarily made by a stranger, that is, a person not a party to the action, and therefore an impertinence." The court in the case at hand notices this feature, but nevertheless allows the admission of this evidence. It is difficult to perceive why the present case would not come squarely within the above prohibition, and if such be the law, this would appear to be an unwarranted extension of the doctrine. In fact, the court did show some hesitation, and expressed as its own opinion that the significance of the defendant's silence was here practically negligible as evidence of an admission. This evidence, it seems, may well have prejudiced the defendant's rights in the present case. But the qualification above mentioned appears to be denied in *Boyles* v. *McCowen,* 3 N. J. L. 677, and perhaps in other cases, on the ground that it is the non-

denial which is the essential element, and therefore it is immaterial by whom the statement is made. Undoubtedly, much may be said for this view. But from one point of view, at least, it appears rather extreme to require one to deny or answer every such statement, however impertinent, made by anyone in his presence, or run the risk of having an admission implied against him therefrom. It is believed that, under the common law rules of evidence, it is within the power of the court to determine, before allowing the question to go to the jury at all, whether the occasion and attendant circumstances are such as reasonably call for an answer from the party. This principle seems to be recognized, at least, in numerous cases. See *Vail* v. *Strong,* 10 Vt. 457; *Moore* v. *Smith,* 14 S. & R. 388; *Com.* v. *Kenney,* 12 Metc. 235. But perhaps this rule is altered by the provision cited above from the California Code.

INTOXICATING LIQUORS—TERMINATION OF WAR—WAR-TIME PROHIBITION ACT.—In an action in equity to enjoin defendant, Collector of Internal Revenue, from enforcing the pains, penalties, etc., of the War-time Prohibition Act, it was *held* that the act, passed under the war power of Congress, ceased to be constitutionally effective when the war terminated and demobilization was completed as a matter of fact, in consequence whereof the war power of Congress, under which alone legislation in derogation of the constitutional rights of the states can be enacted or enforced, likewise ceased. *Simon* v. *Moore* (Mo. D. C., E. D., 1919), 261 Fed. 638.

The Supreme Court passed upon this same question ten days later, in *Hamilton* v. *Ky. Distilleries and Warehouse Co.,* S. C. Cas. No. 589, Oct. Term, 1919, and in *Dryfoos et al.* v. *Edwards,* S. C. Cas. No. 602, Oct. Term, 1919. The Missouri District Court based its decision upon the finding that the war has been terminated and demobilization completed, and determine *a priori* that the Act has become invalid. The Supreme Court says: "The implied power to enact such a prohibition must depend upon some actual emergency or necessity arising out of the war or incident to it; still, the power is not limited to victories in the field and the dispersion of the (insurgent) forces. It carries with it inherently the power to guard against the immediate renewal of the conflict and to remedy the evils which have arisen from its rise and progress." This court points out that the treaty of peace has not yet been concluded, that the railways and other industries are still under national control by virtue of the war powers, that demobilization is not complete, and that the act in question was not passed until one month after the Armistice had been signed. Concluding, it states that it would require a clear case to justify a court in declaring that such an act, passed for such a purpose, had ceased to have force because the power of Congress no longer continued. Beyond a doubt, the Missouri District Court was influenced by the tremendous value of property which faced practical outlawry. But the Supreme Court, through its exhaustive interpretation of indicative facts, and upon sound principles of statutory construction, sustained the validity of the act, and demonstrated fully, although leaving the point to implication, that the remedy must lie with Congress and not with the courts.